

REMARKS

Reconsideration, reexamination and allowance are respectfully requested.

1. Disposition of Claims

Claims 1, 9-10, 13, 15, 17, 19, 22-24, 29, 33, 40-43, 45, 47-48, 51-52, 56, 60-62, 73-74, 82-83, 86, 90, 92 and 94-97 are pending in this application.

Claims 33, 40-43, 45, 47-48, 51-52, 56, 60-62, 73-74, 82-83, 86, 90, 92 and 94-97 have been withdrawn from consideration. The amendments below should facilitate rejoinder. Regarding claims 40 and higher, the Examiner is directed to the recited *thereby* clause (*thereby obtaining microcapsules having 96% to 99% w/w of said core material.*). In any case, a petition regarding the requirement for restriction is held in abeyance.

Claims 1, 9-10, 13, 15, 17, 19, 22-24, and 29 are rejected.

Claims 1, 9, 15, 24, 33, 40, 88, and 97 are currently amended.

Support for the amendments to claims 1, 33, & 40 is in the as-filed specification, e.g., at p. 6, ll. 15-16, where the specification discloses “*preferably the concentration of the core material based total weight of the microcapsules is in the range 96%-99%(w/w)*”. Also, at p.20, ll. 20-21 of the as-filed specification, the relevant part discloses: “*(b) adding an aqueous phase having a pH in the range of 2-7 to the production reactor in step (a) to form an oil-in-water emulsion*”.

Claim 9 was amended to traverse the objection, which identified an inadvertent typographical error whose solution was obvious. Along these lines, similarly obvious errors whose solutions are obvious were corrected in claims 15, 24, 88, & 97.

No new matter is added.

2. Claim Objections

Claim 9 is objected to, for informalities mentioned at p. 2, para. 3 of the Office Action. Claim 9 has been appropriately amended, and thus, the objection should be withdrawn.

3. Rejections under 35 U.S.C. § 103(a)

Claims 1, 9-10, 13, 15, 17, 19, 22-24, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lapidot et al. (US Pub. No. 2002/0064541). The Examiner's rejection is based on a theory of overlapping ranges. The present rejection is traversed, because the rejected claims avoid this issue

Independent claim 1 recites:

“Microcapsules having a core material encapsulated within a microcapsular shell, said core material comprises at least one active ingredient, wherein the microcapsular shell comprises at least one inorganic polymer comprising polymerized precursors obtained by in-situ polymerization of said precursors in a pH in the range of 2 to 7; wherein the concentration of the core material based on total weight of the microcapsules is 96 to 99% w/w.”

Clearly the ranges do not overlap.

Specifically, the Examiner referred to para [0085] of Lapidot et al. which reads, in part, as follows: “the concentration of the solid active ingredient in the dispersion is between about 1% and about 95% by weight.” Also, the Examiner pointed out, on pp.3-4 of the Office Action, that:

The amount of the active ingredient material in the core is about 1% to about 95%

[0085], touching the end point of the presently claimed range. Overlapping of a range has been considered prima facie case of obviousness, because by teaching the touching point, Lapidot directly teaches the presently claimed range.

The cited passage, however, does not refer to the concentration of the active ingredient in the total weight of the microcapsules, and merely makes reference relative to the weight of the dispersion.

The Examiner's attention is directed to the percentages disclosed in Lapidot et al. as follows:

[0126] Preferably, the load of active ingredient(s) in the microcapsules is between about 0.001% and 95% by weight of the microcapsules and, more preferably, between about 5% and 80% by weight of the microcapsules.

Claim 1, on the other hand, discloses a *the concentration of the core material based on total weight of the microcapsules is 96 to 99% w/w*, which range is considerably higher than 95%, or more preferably 80% of Lapidot et al. At best, the ranges in claim 1 and Lapidot et al. are far from overlapping and thus, Lapidot et al. does not teach the touching point or the claimed range.

Therefore, a person of ordinary skill in the art would not be motivated or taught by Lapidot et al. to use a concentration of active ingredient in an amount which is higher than 95%, or preferably by 80% by weight of the microcapsules.

Further, independent claim 1 recites *polymerized precursors obtained by in-situ polymerization of said precursors in a pH in the range of 2 to 7*. The Examiner, on p. 3 of the Office Action, stated that Lapidot discloses *a composition..., whereas the shell is comprised of at least one inorganic polymer obtained by a sol-gel (in-situ) process (see abstract)*. However, the Abstract in Lapidot et al. makes no mention, whether explicit or otherwise, to *in-situ polymerization of said precursors in a pH in the range of 2 to 7*, as recited in claim 1. The Examples in Lapidot et al. disclose the pH levels of aqueous solutions during encapsulation process in the following manner. Examples 1, 2, and 3 in paragraphs [0243], [0245] and [0247] describe pouring the emulsion into a solution at a pH 11.5; and Examples 4, 5, and 6 in paragraphs [0249], [0250] and [0251] disclose encapsulation of dissolved or dispersed Benzoyl Peroxide in Silica by pouring emulsion into an NaOH aqueous solution at pH 10. Therefore, one of ordinary skill in the art would be unable to obtain polymerized precursors from Lapidot et al., at a pH in the range of 2 to 7 disclosed in the embodiment of claim 1.

Therefore, as indicated above, the disclosure in Lapidot et al. fails to disclose the microcapsules in the elected embodiment of the embodiment recited in claim 1. Hence, the rejections of independent claim 1 and dependent claims 9-10, 13, 15, 17, 19, 22-24, and 29 under 35 U.S.C. § 103(a) as being unpatentable over Lapidot et al. should be withdrawn.

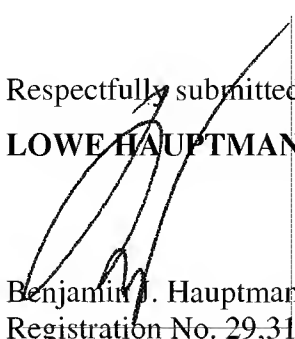
Conclusion

Favorable reconsideration of the application is respectfully requested. It is believed that the present application is in condition for allowance.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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